

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

LEHMAN BROTHERS HOLDING INC.

Debtors.

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SIRS:

NOTICE OF MOTION TO
VACATE AUTOMATIC STAY

CHAPTER 11
CASE 08-13555
Bankruptcy Judge:
Hon. James M. Peck

PLEASE TAKE NOTICE, that upon the Affirmation of Lisa L. Wallace, Esquire, dated April 13, 2010 and the attached exhibits annexed hereto, the undersigned will move this Court before Bankruptcy Judge James M. Peck on May 12, 2010 at 10:00 AM at the United States Bankruptcy Court, Southern District of New York, 1 Bowling Green, New York, New York, for an order pursuant to 11 U.S.C. §362(d)-(f) granting BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP as servicing agent for Lehman Brothers Holding Inc. and United States of America Department of Housing and Urban Development, relief from the automatic stay and permitting BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP as servicing agent for Lehman Brothers Holding Inc. and United States of America Department of Housing and Urban Development, to proceed with 1) filing a Corrective Sheriff Deed vesting title in Lehman Brothers Holding Inc.; 2) filing of application with the State of Indiana Bureau of Motor Vehicles to retire the Mobile Home Certificate; and 3) recording of special warranty deed conveying title from Lehman Brothers Holding Inc. to United States of America Department of Housing and Urban Development, in the mortgaged premises pursuant to 11 U.S.C. §362(d)-(f) and for such other, further and different relief as may seem just, proper and equitable.

PLEASE TAKE NOTICE, that answering affidavits, if any, must be served upon the undersigned and filed it with the Court not less than seven (7) days prior to the return date of this motion.

Dated: Westchester, New York
April 13, 2010

s/ Lisa L. Wallace
Lisa L. Wallace
McCabe Weisberg & Conway
Attorneys for Creditor
145 Huguenot Street, Suite 499
New Rochelle, New York 10801
(914) 636-8900

TO: Lehman Brothers Holdings Inc.
745 Seventh Avenue
New York, NY 10019

represented by:

Arthur J. Margulies
Jones Day
222 East 41st Street
New York, NY 10017

Benjamin Rosenblum
Jones Day
222 East 41st Street
New York, NY 10017

Diane Harvey
Weil Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153

Harvey R. Miller
Weil, Gotshal & Manges, LLP
767 Fifth Avenue
New York, NY 10153

Jacqueline Marcus
Weil Gotshal & Manges, LLP
767 5th Avenue
New York, NY 10153

Jerrold Lyle Bregman
Curtis, Mallet-Prevost, Colt & Mosle LLP
101 Park Avenue
New York, NY 10178

Joshua Dorchak
Bingham McCutchen LLP
399 Park Avenue
New York, NY 10022

Lynn P. Harrison, III
Curtis, Mallet-Prevost, Colt & Mosle,LLP
101 Park Avenue
New York, NY 10178-0061

Paul B. O'Neill
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036

Ralph I. Miller
Weil, Gotshal & Manges, LLP
1300 Eye Street, N.W.
Suite 900
Washington, DC 20005

Robert J. Lemons
Weil Gotshal & Manges, LLP
767 Fifth Avenue
New York, NY 10153

Shai Waisman
Weil, Gotshal & Manges, LLP
767 5th Avenue
New York, NY 10153

Steven J. Reisman
Curtis, Mallet-Prevost, Colt & Mosle LLP
101 Park Avenue
New York, NY 10178

Thomas T. Janover
Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036

William J. Hine
Jones Day
222 East 41st Street
New York, NY 10017-6702

Petitioning Creditor
A/P Hotel, LLC

represented by:

Gregg L. Weiner
Fried, Frank, Harris, Shriver & Jacobson
One New York Plaza
New York, NY 10004

Trustee
James W. Giddens, as Trustee for the SIPA Liquidation of Lehman Brothers Inc.

represented by:

Christopher K. Kiplok
Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, NY 10004

Jeffrey S. Margolin
Hughes Hubbard & Reed
1 Battery Park Plaza
New York, NY 10004

Neil J. Oxford
Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, NY 10004

Sarah K. Loomis Cave
Hughes Hubbard & Reed, LLP
One Battery Park Plaza
New York, NY 10004

William R. Maguire
Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, NY 10004-1482

Trustee
Citibank, N.A., In Its Capacity As Trustee
Bernstein Shur Sawyer & Nelson
100 Middle Street
P.O. Box 9729
Portland, ME 04104-5029

represented by:

D. Sam Anderson
Bernstein Shur Sawyer & Nelson
100 Middle Street
P.O. Box 9729
Portland, ME 04101

Michael A. Fagone
Bernstein Shur Sawyer & Nelson
100 Middle Street
Portland, ME 04104

Trustee
Aron Oliner as Chapter 11 Trustee of The Kontrabecki Group
c/o Duane Morris LLP, Suite 2000
1540 Broadway
New York, NY 10036

represented by:

William Heuer
Duane Morris LLP
1540 Broadway
New York, NY 10036-4086

U.S. Trustee
United States Trustee
33 Whitehall Street
21st Floor
New York, NY 10004

represented by:

Andrew D. Velez-Rivera
Office of the U.S. Trustee
33 Whitehall Street
21st. Floor
New York, NY 10004

Claims and Noticing Agent
Epiq Bankruptcy Solutions, LLC Claims Agent
(f/k/a Bankruptcy Services LLC)
757 Third Avenue, 3rd Floor
New York, NY 10017

Claims and Noticing Agent
Epiq Bankruptcy Solutions, LLC, Craig Fallon
757 Third Avenue
New York, NY 10017

Creditor Committee
Official Committee of Unsecured Creditors represented by Dennis F. Dunne
Milbank, Tweed, Hadley & McCloy LLP
1 Chase Manhattan Plaza
New York, NY 10005

Robert K. Dakis
Quinn Emanuel Urquhart Oliver & Hedges
51 Madison Ave
22nd Floor
New York, NY 10010

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

AFFIRMATION IN SUPPORT
OF MOTION TO
VACATE AUTOMATIC STAY

LEHMAN BROTHERS HOLDING INC.

CHAPTER 11
CASE 08-13555
Bankruptcy Judge:
Hon. James M. Peck

Debtors.

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STATE OF NEW YORK)
COUNTY OF WESTCHESTER):ss

Lisa L. Wallace, the undersigned, an attorney duly admitted to practice before this
Court, affirms under penalty of perjury as follows:

1. That the jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1334(a), 28
U.S.C. § 157(a) and 28 U.S.C. §157(b)(2)(G), and the Bankruptcy Amendments and Federal
Judgeship Act of 1984.

2. I am associated with the law firm of McCabe, Weisberg & Conway, PC, attorneys for
the secured creditor BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing
LP as servicing agent for Lehman Brothers Holding Inc. and United States of America
Department of Housing and Urban Development (hereinafter "Creditor").

3. I make this Affirmation in support of an Order vacating the automatic stay entered in
this Chapter 11 proceeding and permitting Creditor to proceed with 1) filing a Corrective Sheriff
Deed vesting title in Lehman Brothers Holding Inc.; 2) filing of application with the State of

Indiana Bureau of Motor Vehicles to retire the Mobile Home Certificate; and 3) recording of special warranty deed conveying title from Lehman Brothers Holding Inc. to United States of America Department of Housing and Urban Development, against the real property known as 4621 Autumn Ridge Drive, Columbus, Indiana 47203 (hereinafter "Premises") which is owned by Lehman Brothers Bank, FSB.

4. On January 21, 2004, Aurora Loan Services, Inc. advanced to Derrick Foist \$95,248.00 in return, Derrick Foist executed a note in favor of Aurora Loan Services, Inc.(A copy of the note is annexed hereto as Exhibit A)

5. In order to secure payment of said note, Derrick Foist executed a Mortgage securing a Note on or about January 21, 2004 in favor of Aurora Loan Services, Inc. (A copy of the Mortgage is annexed hereto as Exhibit B). Said mortgage was recorded in the Office of the Recorder in Bartholomew County, Indiana on April 26, 2004 as instrument # 200400006009.

6. That the said lien constitutes a first mortgage lien upon the premises.

7. The borrower, Derrick Foist failed to make payments under the note commencing with the September 1, 2006 payment.

8. That on September 11, 2006 Aurora Loan Services, Inc. Filed an action in Bartholomew County Superior Court to foreclose on the mortgage dated January 21, 2004 in the amount of \$95,248.00 (See attached complaint as Exhibit C).

9. At the commencement of the action the Secretary of Housing and Urban Development was made a party to the action as a result of their subordinate lien dated August 20, 2004 and recorded on October 27, 2004 in the Office of the Recorder in Bartholomew County, Indiana on as instrument # 200400015182.

10. On January 7, 2008, Bartholomew County Superior Court granted and entered an Agreed Judgment and Decree of Foreclosure, foreclosing the rights of Derrick Foist and providing a period of 1 year for the Secretary of Housing and Urban Development to redeem their interest in the property. (See attached judgment as Exhibit D).

11 . On March 10, 2008, Aurora Loan Services, Inc assigned the Agreed Judgment and Decree of Foreclosure dated January 7, 2008 to Lehman Brothers bank, FSB.(See attached assignment as Exhibit E)

12. On March 12, 2008 a Sheriff's Deed was executed conveying title to Lehman Brothers Bank, FSB, the deed was subsequently recorded on April 9, 2008 in the Office of the Recorder in Bartholomew County, Indiana as instrument # 200800004395. (See attached deed as Exhibit F)

13. After the recording of the deed, it was determined that the deed should have been recorded in the name of Lehman Brother Holdings, Inc.

14. Lehman Brother Holdings, Inc. on September 15, 2008 filed for Chapter 11 relief in the United States Bankruptcy Court Southern District of New York under petition #08-13555.

15. As a result of the filing, the servicer, BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP was stayed from correcting the sheriff deed, retiring the Mobile Home Certificate, and deeding title United States of America Department of Housing and Urban Development.

16. 11 U.S.C. §362(d)(1) provides in pertinent part that the Court shall grant relief from the stay imposed by Section 362(a) "for cause, including lack of adequate protection of an interest in property..." As set forth herein, cause exists to vacate the automatic stay as the Creditor is unable to complete a transaction that will ultimately enrich the debtor.

17. Cause is sufficient to vacate a stay under 11 USC 362(d)(1) when viewing the totality of the circumstances. In re Baptist Medical Center, Inc. (1985, EDNY) 52 BR 417 those circumstances include situations where the stay harms the creditor and lifting the stay will not unjustly harm the debtor. In re Opelika Mfg. Corp. (1986, BCND Ill) 66 BR 444. In addition to situations where the lifting of the stay will ultimately benefit the debtor. In re C&S Grain Co. (1995, CA7 Ill) 47 F3d 233.

18. The Creditor seeks relief from stay to complete the required transactions in the name of the debtor including 1) filing a Corrective Sheriff Deed vesting title in Lehman Brothers Holding Inc.; 2 Exhibit G) filing of application with the State of Indiana Bureau of Motor Vehicles to retire the Mobile Home Certificate; and 3 Exhibit H) recording of special warranty deed conveying title from Lehman Brothers Holding Inc. to United States of America Department of Housing and Urban Development, against the premise (Exhibit I).

19. Upon completion of these steps the Debtor will ultimately lead to the enrichment of the estate with the eventual transfer to United States of America Department of Housing and Urban Development.

20. That Creditor seeks an Order of relief from the automatic stay pursuant to 11 U.S.C. §. 362(d)-(f). (A copy of the proposed order is annexed as Exhibit J)

21. Creditor further requests that the Court order that F.R.B.P. Rule 4001(a)(3) is not applicable so that it may immediately enforce and implement the order granting relief from the automatic stay.

WHEREFORE, Creditor prays that an Order be made and entered herein:

(a) granting relief from the stay of the proceedings relevant to

- 1) filing a Corrective Sheriff Deed vesting title in Lehman Brothers Holding Inc.;
- 2) filing of application with the State of Indiana Bureau of Motor Vehicles to retire the Mobile Home Certificate; and
- 3) recording of special warranty deed conveying title from Lehman Brothers Holding Inc. to United States of America Department of Housing and Urban Development

(b) waiver of the provisions of F.R.B.P. Rule 4001(a)(3) which states that the order granting relief from the automatic stay will be effective ten (10) days from the date said order is entered; or

(c) for such other and further relief as the Court may seem just and proper.

Dated: New Rochelle, New York
April 13, 2010

s/ Lisa L. Wallace
Lisa L. Wallace, Esq.
McCabe, Weisberg & Conway, PC
Attorneys for Secured Party
145 Huguenot Street, Suite 499
New Rochelle, New York 10801
914.636.8900